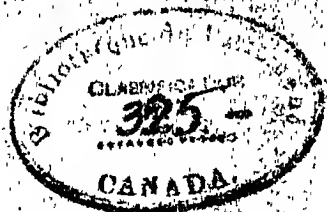


BEATY.
STATEMENT OF FACTS AND
OPINIONS FOR HON. HENRY
J. CLARKE, Q. C., OF MANITOBA.

Dear Baby, Mom



STATEMENT
OF
FACTS AND OPINIONS
FOR
HON. HENRY J. CLARKE, Q.C.,
OF MANITOBA,
RELATING TO HIS TITLE TO RIVER LOTS 7 AND 9,
IN THE
PARISH OF ST. AGATHE,
MANITOBA.
BY JAMES BEATY, ESQ., Q.C., M.P.P., &c.

1882

STATEMENT OF FACTS AND OPINION

FOR

HON. H. J. CLARKE, Q.C.

OF MANITOBA,

*Relating to his title to River Lot 7, in the Parish of St. Agathe,
Manitoba.*

I understand that lot 5 has already been granted to Mr. Clarke, and, as the title to lot 7 is substantially the same as to lot 5, it is difficult to understand why the grant of lot 7 was withheld. Confining the present statement to lot 7, we have the following facts established by the papers and affidavits submitted to me :

Lot 7 in the Parish of St. Agathe.—144½ acres ; it is a river lot of 10 chains frontage, on the West side of Red River, and when purchased ran back from the river the usual 2 miles in depth.

1871.—Joseph Goudon had possession, and had also buildings and other improvements on the lot.

1872, July 8th.—Joseph Goudon, farmer, of the Parish of St. Agathe, and his wife, conveyed to Henry J. Clarke, of Winnipeg, Barrister. (Amount \$100.)

"All of that certain parcel or tract of land and premises situate, lying and being in the Parish of St. Agathe, in the County of Proucher, fronting on the Red River, near Pembina, containing the said parcel or tract of land, twenty chains in front on the West side of the said River, which forms the front

boundary thereof, and running back two miles in depth from the said front boundary, bounded on one side by land belonging to the said party of the third part, and on the other side by unoccupied lands, the Hudson's Bay Company's posts or forts being the nearest house or building to the said lot, parcel or tract of land at the present time."

To have and to hold in fee, "with all and every the buildings, fences and all other improvements of whatsoever kind on the said lot, parcel or tract of land, or thereto in anywise belonging." Full covenants. Bar of Dower.

Executed by Mark in presence of two witnesses—George Roy, J. P., and Joseph Crowson. Receipt for \$100 by Joseph Goudon, in presence of George Roy, J. P.

Affidavit of Joseph Crowson, of execution of deed on the date mentioned in it, and that it "was read and explained to the parties above named in my presence and in the presence of the other subscribing witnesses thereto." Sworn on the same day before V. J. Beaupré, J. P. Certificate of examination of wife before V. J. Beaupré, J. P.

Registered in the Registry Office for the County of Provencher, in Book 2 for the subdivision of Morris, at 10 o'clock a.m., on the 29th day of May, 1879.—No 716.

Henry J. Clarke.—Solemn declaration. Made application for patent in 1879. He knew lands nine years. He bought from Goudon as above stated. That Goudon at the time of the purchase (winter of 1871) "was living on the" land and had "cultivated the same for years, a large tract of the land being fenced and cultivated, and a good log dwelling house and stables and other buildings being thereon erected." That "from the year 1871 up to the present time (29th May, 1879) the land in question has always been my property, and is so still; and the dwelling house and stables are still standing, the dwelling house having been occupied until a few weeks ago by a tenant of mine; and I have caused the said lands to be surveyed into building lots this spring."

Jacques St. Denis.—Solemn declaration, 3rd May, 1879. Knew the lands for 18 or 20 years. That Goudon "settled on the said lands, the subject of this application, at least seven (7) years before the fifteenth (15th) day of July, 1870."

That Goudon "built a good log house, stables and other buildings on the said twenty chains of land, and fenced in and cultivated a considerable lot of the same."

That Goudon "was in peaceable possession and occupation of the said land on the 15th day of July, 1870, and continued to

occupy it till he sold it to the present applicant. The original buildings, or at least the house and some others, are still standing unoccupied by Mr. Clarke's tenants."

That there is no adverse claim.

David Goudon.—Solemn declaration 3rd May, 1879. Brother of Joseph Goudon.—Known lands 17 years past.

That his brother Joseph "settled on the said lands, the subject of this application, 7 or 8 years before 15th July, 1870, and built a good house, stables and other buildings thereon at once after he first settled on it, and occupied and fenced and cultivated a large part of the said land fronting on the river."

That Joseph Goudon "was in peaceable possession and occupancy as aforesaid of said land on the 15th day of July, 1870, and up to the time when he sold the same to the present applicant, who has owned the same ever since."

That "the house and stable on said land are still standing, and the place is now occupied by a tenant of the present applicant."

That there is no other or adverse claim.

Augustin Gosselin.—Solemn declaration 3rd May, 1879.—Have "known the lands, the subject of this application, during the past twenty-eight (28) years."

That "I remember well having assisted Joseph Goudon to build the house still standing on the land, the subject of this application."

That "the said Goudon settled on the said lands many years before the transfer to the Dominion of Canada. I have lived just over the boundary line for twenty-eight years, and in sight of Goudon's house."

That the said "Goudon occupied the said land and fenced and cultivated a large field for several years, and was in full and peaceful occupancy and possession of the said land on the fifteenth day of July, 1870, and up to the time when he sold the same to the present applicant."

That land was 20 chains in front on the west bank of Red River, by two miles in depth.

He "worked and ploughed on the said land for Goudon."

Joseph Goudon.—Solemn declaration, 3rd May, 1879. Knows land for 17 years.

That "in the year 1862 I settled on the land the subject of this application, and in that year and the following years I built a good substantial log house and other buildings on the said land. I also cultivated and fenced in a good, large tract of

said land, and was assisted in ploughing the same by Augustin Gosselin, who lived there, and still lives just across the boundary line, in the United States."

That "I was in uninterrupted possession and occupation of the said land from 1862 up to the year 1872, when I gave a deed to Mr. Clarke, the present applicant, for the said land, which I sold to him in 1871, the deed being given when the last payment was made."

That "the boundary of my said land which I sold to the present applicant was a *coute* which separated my land from the lands of the Hudson's Bay Company, thence twenty (20) chains fronting on Red River, and two miles back."

"I was in full and peaceable possession and occupation of the said land on the fifteenth (15th) day of July, 1870, and up to the year 1872."

"There is no adverse claim to the said land."

The applications and foregoing deed and declarations were received in the Lands Department at Winnipeg on the 30th May, 1879.

The Hudson's Bay Company obtained other declarations from the said Joseph Goudon (19th July, 1879) and Augustin Gosselin (19th July, 1879), and filed same. (See them hereinafter extracted.) And Mr. Clarke replied in a letter of January 10th, 1880, with other declarations supporting his claim, as follows:—

Henry Joseph Clarke.—Declaration 10th January, 1880.

He explains the manner in which the first affidavits were obtained, and gives the names of the persons present, and shows that Joseph Goudon and Augustin Gosselin were not misled in their first statements, but fully understood the same, and that if any part of their statements is unreliable, it is what is contained in the second declarations.

William Hill Nash.—Declaration 3rd January, 1880.

Is a Barrister and Conveyancer. Knows land for 9 years.

That Joseph Goudon, Augustin Gosselin, Jacques St. Denis, came to his office and made their declarations, having been first fully read and explained "so that there could not possibly be anything set forth in their declarations that was not there by their full knowledge and approval." "I can further state from personal knowledge that Joseph Goudon understands and speaks the English language very fairly, and speaks to me in English."

F. T. Brailley.—Declaration 3rd January, 1880. Is sub-Collector of Customs.

"I know lots 5 and 7, claimed by Mr. Clarke, and I know Joseph Goudon. Goudon's fence ran along the *coulé* between his land and that of the Hudson's Bay Company."

William Williams.—Declaration 3rd January, 1880. Is a Bailiff of the County Court.

Was present when the first declarations of David Goudon, Augustin Gosselin and Jacques St. Denis came to the office of Mr. Nash. Explains how the declarations were dictated, read and explained, and says: "I am now shown the copies of their declarations attached to Mr. Nash's declaration, and I declare that they are just as they were dictated by the parties by whom they are signed. Joseph Goudon speaks and understands the English language very well. He has often spoken to me and, in my presence, to others, and in saying the contrary he says what is not true."

An'oi is Paul Larente.—Declaration January 6th, 1880. In French. Knows Joseph Goudon, and that he can well understand the English language.

Paul Gosselin.—Declaration January 8th, 1880.

Knew "Joseph Goudon, the first owner of River lots 5 and 7, and he often told me he had sold the whole of his property to one Mr. Clarke, of Winnipeg, for one hundred dollars, what he considered an enormous price for that land at that time."

Fortunat A. Martin.—Declaration January 5th, 1880. Is a Dominion Land Surveyor. Knows land for eight years.

That "I was employed by the Dominion Government to survey the settlements built on Red River, from the international boundary line at Pembina to the second correction line, on both sides of the Red River, in the year 1872 (one Dauteuil, a surveyor, deceased, preceded me in the said survey in 1871).

"I know lots 5, 7 and 9. When I made the survey of said lots 5 and 7 in the fall of 1872 Joseph Goudon was living in a log house which then stood and is still standing on lot 5. Goudon informed me that he had sold his land to Henry J. Clarke, then Attorney General of Manitoba and I entered Mr. Clarke's name on my plan of survey as the owner of lots 5 and 7, as Joseph Goudon told me that he had sold two lots to Clarke, as the improvements, ploughing, fencing, etc., extended over the whole lot 5 and about one-third of lot 7. Any plan will show the extent of the improvements as I found them at the time of my survey.

"I remember perfectly well that, at the request of Mr. Clarke, I planted posts to mark Mr. Clarke's land. I planted four wood-

en posts on the lines of the lots in rear. Mr. Clarke's name was marked on these four posts. They marked the rear of lots 5, 7, 9 and 11, all of which Mr. Clarke claimed as follows:—Lots 5 and 7 as being purchased by him (Clarke) from Joseph Goudon: lot 9 as having been purchased from one Mike or Michael Meehan, and lot 11 on a Volunteer's Warrant." Knows Joseph Goudon, "and see and speak to him often." Was present when Joseph Goudon, David Goudon, Augustin Gosselin and Jacques St. Denis came to the office of Mr. Nash, and when they made their first declarations. "They dictated their declarations word for word, as nearly as could be, as they are written, and their declarations were carefully read over to them in the French and English languages, first by Mr. Clarke in my presence, afterwards, at Mr. Clarke's request, I read their several declarations over again to them in the French language in the most cautious manner, so that there could be no possibility of their being in any manner mistaken as to the facts set forth in their declarations, after which they severally signed." He says further: "I most positively declare that Joseph Goudon understands and speaks the English language very fairly, and that he perfectly understood and declared to every word and fact set forth in his declaration as I read it to him, as I did those of all the others in the French language, as I have before stated."

"I was employed professionally by Mr. Clarke last spring to survey lots five (5) and seven (7). On beginning my survey Mr. Duncan Matheson, Chief Clerk of the Hudson's Bay Company at West Lynne, having with him as a witness Mr. Bradley, sub-Collector of Customs, ordered me off the ground and forbade me to survey lot number five (5) claiming it as the property of the Company, saying at the same time: *You can survey lot number seven (7), we have no claim on it.* I continued the survey and finished it, having staked out the whole front for about half a mile back from the river of the two lots 5 and 7."

1880, March 2.—Clarke received notice from the Department of the Interior that his claim to lot 5, under the Manitoba Act, had been allowed; but that his claims to lots 7 and 9 were disallowed. As appears from the foregoing extracts, Joseph Goudon, under declarations relating to the lot in question, on the 3rd May, 1879, obtained at the instance of Mr. Clarke, and as it will appear hereafter, on the 19th July, 1879, a declaration was obtained at the instance of his opponents, supposed to be the Hudson's Bay Company.

Subsequently, on the 22nd November, 1880, another declaration was made by Joseph Goudon to the following effect:—

That I sold to Henry J. Clarke 20 chains of land, "which was mine before the transfer, and for a great many years before.

cannot now exactly say how long before the 15th day of July, 1870, but at the time I signed the deed in 1872 to Mr. Clarke of said land, *in presence of several witnesses*, I was more able to calculate the length of time I had lived on the land, and stated it at the time, and then believed and still believe the same to be correct."

In May, 1879, I made a solemn declaration, which "was read to me in French and English, and it is now read to me again, and I swear the same is correct, *to the very best of my belief and knowledge.*"

In July, 1879, "I was sent for to my place at Two Little Points by the Hudson's Bay Company and threatened if I did not go to West Lynne. I went there and was brought before a lawyer from Winnipeg, Mr. Blanchard, and Alexander Scott, of the Marais, acted as interpreter. Scott cannot speak French *half as well as I speak English*, and I thought it strange at the time why he should be asked to translate, but it was Mr. Blanchard who read the paper to us in English, and at the time we were all more or less under the influence of whiskey. I am now shown the declaration in question, and swear I did not intend to make any such declaration, nor did I understand that I was made to declare any such things as are set forth in said declaration. *I never did declare that I did not understand English*, because it would be false, as I do speak English passably well, and I understand it also."

"I did not knowingly declare that I only sold twelve chains of land to Mr. Clarke, because I sold him twenty chains." I had stated so to Mr. D'Auteuil, surveyor, in 1871, and to Mr. Martin, and other surveyors, and the number of chains was decreased when the deed was drawn, and twenty-four was mentioned, and ultimately twenty chains was inserted in the deed.

I settled on lot 5 a great many years before the transfer, "and my father-in-law, Larvecque, was living on what is now lot 7, and had lived there for a year before I went on lot 5." He had a good log house on the lot. He moved off. "My father-in-law gave me his lot, now seven (7), which was alongside the one I settled on, now five (5), together with the building on it. I had my cattle in that building all winter, and built a house for myself on lot five (5). I continued to use the building on lot seven (7), and some years after, for my own convenience, I moved it closer to my house. This stable, together with another which I will describe hereafter, were standing and in use when I sold the property to Mr. Clarke, and were still standing for about a year after, when some one must have stolen away the timber. I explained all this to Mr. Clarke at the time I sold him the land, to show him that my title was good," etc.

I am able to say that, "In the year 1871 I sold to Henry Joseph Clarke, of Winnipeg, my said claim. I moved off the land in the month of December, 1871." I never made such statement. I did not move off the land I sold to Mr. Clarke until the winter after I signed his deed, which was in July, 1872.

"The time that I was brought before Mr. Blanchard I insisted on him and Scott coming with me to see where my house, barn and stables were situated. I went with them and showed the house and barn. The barn stands about 25 or 30 feet from the house, both being on what is now lot 5; but when I asked them to come and see where my stables stood they refused to do so, although I wanted them and pointed to the place. It was on what is now lot 7, and about six chains north from my house. There were two stables, one for my horses and the other for my cattle. Those buildings were one of them 20 feet by 20 feet square and the other was 15 x 15 feet, and they were on the land when I sold it to Mr. Clarke and for a year after. When I left my hay was there, and my fences. The fence from and around the stables went to the *coulé*. I had at least six acres fenced in and some about seven bushels of grain, which would be about four acres, without counting the potatoes and other roots or vegetables which I cultivated. One of the buildings I bought from the Hudson's Bay Company; it was a house of one Augustin Primeau, a servant of the Company, and stood across the *coulé*. It was sold to me by Edward McKay, the clerk of the Company at that time, and I moved it on to my land and used it as one of my stables and was the one I describe as 15 feet square.

"This declaration was made before Mr. Justice Dubuc, of the Court of Queen's Bench, Manitoba, "after having been read over and explained in the *English* and *French* languages, to the said Joseph Goudon, by and before me."

(Sgl.)

"J. DUBUC."

Antoine Collin.—Declaration 14th February, 1881.

"We always understood that our claims were twelve chains by two miles each."

"I know the lot of land now lot seven (7), which was given to my brother-in-law, Joseph Goudon, by my father-in-law, Joseph Larocque, and the building which was on it. My brother-in-law used the building—which was large, about twenty feet square—as stables, and he built another building also for stabling on the same land, and occupied them both for many years, before and at the time of the transfer and up to the time he sold the same to Mr. Clarke. We all know that the land and building were given to the said Goudon by his father-in-law, and all the family were aware of it."

Certified by Louis O. Bourget, Notary Public, to have been duly read and explained to Collin and "that he fully and perfectly understood the same."

Joseph Larocque, Sen.—Declaration, 14th February, 1881.

"About seventeen years ago I settled upon, took up according to the Red River custom, and built upon the land now known in the Government of Canada, Surveys as lot number seven (7) in the River belt in the Parish of St. Agathe."

"I lived with my family for some time in the house which I built on said land, and one of my sons was born in said house; his name is Joseph Ellis, and he will be sixteen (16) years of age in March next."

"About a year after I had settled on the land in question my son-in-law, Joseph Goudon, who had been away in the plains, returned and determined to settle down on land next to mine, that is to say, between my land and that of the Hudson's Bay Company, and as I was anxious to have him settle down I gave him my house and the land in question, and moved across the Red River to the east side and built on the lot of land which is now known as lot 2."

"My son-in-law, Joseph Goudon, with his family, settled down and built himself a house and other buildings on the land now known as lot five (5) which was next to the Hudson's Bay Company's land and next to the ~~cove~~ *cove*, and during all the time I lived opposite to him he occupied the building and land which I gave him, and he built another building on the said land for the accommodation of his cattle, and was in peaceable and sole possession and occupation of the said land and buildings at the time of the transfer and up to the time when he sold the same to Mr. Clarke, the Attorney General of Manitoba."

"The said land and building was given by me to my son-in-law voluntarily and as a free gift, and was always occupied by him with my full knowledge and consent till he sold the same to Mr. Clarke."

Certified by Louis O. Bourget, Notary Public, as in case of Collin.

Augustin Gosselin.—Declaration 25th November, 1880.

"I know the land the subject of this application and have known the same for the last seventeen or eighteen years." I know Joseph Goudon and his father-in-law, Joseph Larocque.

"I remember the time when the said Joseph Larocque settled on the land now lot 7, the subject of this application; it was about eighteen years ago. He built a house on the said land and lived there for about one year. One of his sons was born in said house, who

is now a young man. After he had lived there for about the time I mentioned he crossed the river and built a house opposite the Hudson's Bay Company's post and continued to live there with his family till he sold out."

"When Joseph Larocque left his place now lot 7 his son-in-law, Joseph Goudon, was settled on what is now lot five (5), and I know that the said Goudon for a great many years after used the building on what is now lot 7 as one of his stables."

"I helped Joseph Goudon to build his house on what is now Lot 5, about seventeen years ago, and I also helped him to plough his land. His house, which is still standing and within view of where I am now making this declaration, was and is on what is known as lot 5, and his stables were about 6 or 7 chains to the north of his house, on what is now known as lot 7. The stables in question were still standing when Goudon moved away after he had sold out; they were still there and I think about a year or so after."

Reiterates his first declaration as true, notwithstanding what may have occurred afterwards.

The foregoing extracts represent the evidence on behalf of the applicant. The words in quotations are true copies. The other matter sets forth the substance; leaving out all extraneous matters and what applied to the other lots only.

The only evidence in opposition comes from Joseph Goudon, Alexander Scott and Augustin Gosselin, and is as follows:

Joseph Goudon.—Declaration, 19th July, 1879.

In 1866 took up claim of the land in question, "and in the same year I built a house and stable thereon, subsequently I ploughed up, cultivated and fenced some land."

"My said house and all my said cultivated land, with the exception of a very small corner, were on what is known as lot number 5 of Dominion Government Surveys of said Parish of St. Agathe."

"I had on said claim, in all, three and one-half acres of land cultivated, or thereabouts."

"In the year 1871 I sold to Henry Joseph Clarke, of the City of Winnipeg, my said claim. I moved off the same in the month of December of the same year."

"When I sold said claim I had no idea of how much land I would be entitled to by virtue of my residence and improvements thereon, but I asked said Henry Joseph Clarke to how much land I would be entitled, and he answered "twelve chains." I therefore agreed to sell him twelve chains, and I always understood that it was so expressed in the deed thereof from me to him."

"I had no side lines, boundaries or marks to show how much land I had taken up."

"At the time I owned said land half-breeds paid little or no attention to quantity of land, but merely squatted on a place convenient for a house or small field."

"Since I removed from said claim it has never been cultivated."

"I am informed that in the month of May, 1879, I made a declaration in support of the application of the said Henry Joseph Clarke for a Crown Patent for said lots 5 and 7, and that in said declaration I stated that I took up and settled on said land in the year 1862; that I sold to said Henry Joseph Clarke said lots 5 and 7, and that the boundary of said land so sold was a *coule*, which separated the same from the Hudson's Bay Company, and thence 20 chains fronting on Red River, and two miles back. I can neither read nor write, nor do I understand the English language, and I solemnly declare that I never understood that I was making any such declaration, that I did not say that the boundary of my said land was as above described, or that I sold said Henry Joseph Clarke twenty chains of land; but that I understood from him that I would be entitled to twelve chains of land, and only sold him twelve chains."

"I further solemnly declare that I did not state to him or any other person that I settled on said land in 1862, and I did not understand that it was so stated in said declaration."

Certified to have been "read over, interpreted and explained," by Sedley Blanchard, a Commissioner, etc.

Augustin Gosselin.—Declaration 19th July, 1879.

"I am informed that in the month of May, 1879, I made a declaration in support of the application of Henry Joseph Clarke for a patent for said lots 5 and 7, in which it is stated that Joseph Goudon's land the subject of said application was twenty chains in width."

"I never knew that the said Goudon claimed any particular quantity of land, and never made the statement to said Henry Joseph Clarke or any other person that his claim was twenty chains in width, and I did not at the time I made said statement or declaration understand that any width was therein mentioned."

"I did not at the time know for what particular lots said Henry Joseph Clarke was applying for a patent, and merely gave what information I possessed as to the settlement of said Goudon on his claim."

"All the information I gave at the time said declaration was made was that said Goudon's house was built before the transfer."

"I cannot read or write, nor do I understand the English language."

Alexander Scott.—Declaration 19th July, 1879. "I have lived continuously in the immediate neighbourhood of the village of West Lynne aforesaid since the year 1867."

"I have known Joseph Goudon ever since the said year."

"From the said year until 1872 said Goudon lived upon what is now known as lot number five (5) of the Dominion Government Surveys of the said Parish of St. Agathe."

"The only improvements said Goudon ever had on said lots since I have lived in the said Province of Manitoba were a small dwelling house about twelve feet by sixteen feet in size, containing only one room, a small stable about ten feet by ten feet, and a small field cultivated and fenced containing from three to four acres or thereabouts."

"No improvements have ever been made on said land since said Goudon left it in 1872. The said house and stables were on said lot 5, but I cannot say whether the whole of said field was on said lot 5, as no survey lines were run at the time Goudon lived on said land, and all traces of the field are gone, but to the best of my judgment it was entirely on said lot 5."

THE STATUTE.

under which this claim is made is 33 Vic., ch. 3, sec. 32, s. 4, which says:—

"All persons in peaceable possession of *tracts* of land at the time (15th July, 1870) of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same on such terms and conditions as may be determined by the Governor in Council."

This Parish of St. Agathe was a portion of the Province in which the Indian Title had "not been extinguished," and this legislation was designed "for the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them" (12th May, 1870).

Purchasers of holdings are then defined, the last of which is set forth in sub-section 4 as above quoted, and it had the effect of "assuring to the settlers" * * "of lands" then "held by them," the "*peaceable possession*" and "the quieting of titles" to such lands; and to "all persons in *peaceable possession of tracts of land*" * * "the right of pre-emption of the same." This section does not limit the possession to a "lot," although the

term "lot" is used in section 31, but defines the holding as the "peaceable possession of *tracts* of land," which may mean more than a lot; not likely to mean less.

1. The first question that presents itself is: Had Clarke or his vendor "peaceable possession" of a "tract of land"; the tract or lot in question, combined with lot 5 the title to which is already allowed to him?

2. To what extent is "possession" required of such "tract"? How long is the possession required to be? What is the nature of the "possession," which entitles the holder to the "right of pre-emption"?

"Possession" is a wide word, and of large application. In cases in the new territory in Manitoba almost any actual locating on lands, combined with residence, must be taken to have been "possession" within the meaning of the Act. I have no doubt Governments in their dealings with the "settlers" in the Province of Manitoba have always viewed the question in a liberal spirit, in favour of the settler, and not adversely to him or harshly towards him. This is evidently the spirit and meaning of the Act. The possession was to be "peaceable." Joseph Goudon had no dispute with anyone, although he lived there for years. There was no adverse claim when Clarke bought, nor for seven years afterwards. There was no adverse claim filed anywhere at the time he bought from Goudon; nor has there been any since based on "possession" or any right or title in direct connection with the land. The opposition to the claim to lot 7 is simply denial of possession, or of right. The possession as far as it went was certainly "peaceable," as there was no adverse claimant—no person claiming adverse possession. There is no length of time required to bring persons in possession within the Act. All they needed was to be in "peaceable possession" "*at the time of the transfer*" from the Hudson's Bay Company to Canada; that is, on the 15th July, 1870. The gist of the contention now made, as it appears, on behalf of the Hudson's Bay Company is, as I judge from the nature of the declarations put in on their behalf, that Goudon had not "peaceable possession" of lot 7 as he had of lot 5; or had not such "possession" of lot 7 as is contemplated by the Act to entitle him to the "right of pre-emption." There is no doubt he was a "settler," and that he settled on lots 5 and 7, and that he was in some kind of possession on the 15th July, 1870; but was that settling as is shown by the declarations such possession of lots 5 and 7, and especially of lot 7, as brings him within the Act? To determine that the evidence must again be briefly referred to.

Joseph Goudon in his first declaration specifically defines the land as follows:—

"The boundary of my said land which I sold to the present applicant was a *coulée* which separated my land from the lands of the Hudson's Bay Company, thence twenty (20) chains fronting on Red River and two miles back." This plainly includes lot 7.

Jacques St. Denis says that Goudon "built a good log house, stables and other buildings, on the said twenty chains of land and fenced in and cultivated a considerable lot of the same."

Augustin Gosselin says he knows the land the subject of this application, and that the "land was 20 chains in front on the west bank of the Red River, by two miles in depth."

F. T. Bradley says that he knows lots 5 and 7, claimed by Mr. Clarke and Joseph Goudon. "Goudon's fence ran along the *coulée* between his land and that of the Hudson's Bay Company."

Fortunat A. Martin, Surveyor, says he knows the land for 8 years. "When I made the survey of said lots 5 and 7 in the fall of 1872, Joseph Goudon was living in a log house which then stood and is still standing on lot 5. Goudon informed me that he had sold his land to Henry J. Clarke, then Attorney General of Manitoba, and I entered Mr. Clarke's name on my Plan of Survey as the owner of lots 5 and 7, as Joseph Goudon told me that he had sold two lots to Clarke, as the improvements, ploughing, fencing, etc., extended over the whole lot 5 and about one-third of lot 7."

"My plan will show the extent of the improvements as I found them at the time of my survey."

"I planted posts to mark Mr. Clarke's land. I planted four wooden posts on the line of the lots in rear. Mr. Clarke's name was marked on those four posts. They marked the rear of lots, 5, 7, 9 and 11, all of which Mr. Clarke claimed."

"I was employed professionally by Mr. Clarke last spring (of 1879) to survey lots five (5) and seven (7). On beginning my survey Mr. Duncan Matheson, Chief Clerk of the Hudson's Bay Company at West Lynne, having with him as a witness Mr. Bradley, sub-Collector of Customs, ordered me off the ground and forbade me to survey lot number five (5), claiming it as the property of the Company, saying at the same time *you can survey lot number seven (7), we have no claim on it*. I continued the survey and finished it, having staked out the whole front for about a half a mile back from the river of the two lots 5 and 7."

Joseph Goudon in his third declaration says: "I did not knowingly declare that I only sold twelve chains of land to Mr. Clarke, because I sold him twenty chains."

I settled on lot 5 a great many years before the transfer "and my father-in-law, *Larocque*, was living on what is now lot 7, and had lived there for a year before I went on lot 5." *He had a good log house on the lot. He moved off. "My father-in-law gave me his lot, now seven (7), which was alongside the one I settled on, now five (5), together with the building on it. I had my cattle in that building all winter, and built a house for myself on lot five (5). I continued to use the building on lot seven (7), and some years after for my own convenience I moved it closer to my house. This stable, together with another which I will describe hereafter, were standing and in use when I sold the property to Mr. Clarke."* (See the full declaration.)

Antoine Collin says: "We always understood that our claims were twelve chains by two miles each."

"I know the lot of land now lot seven (7), which was given to my brother-in-law, *Joseph Goudon*, by my father-in-law, *Joseph Larocque*, and the building which was on it. My brother-in-law used the building—which was large, about twenty feet square—as stables, and he built another building also for stabling on the same land, and occupied them both for many years before and at the time of the transfer and up to the time he sold the same to Mr. Clarke."

Joseph Larocque, Sen., says: "About seventeen years ago, I settled upon, took up according to the Red River custom, and built upon the land now known in the Government of Canada Surveys as lot number seven (7) in the River belt, in the Parish of St. Agathe." "I lived with my family for some time in the house which I built on said land, and one of my sons was born in said house." "I gave him (*Joseph Goudon*), my house and the land in question." "He occupied the building and land which I gave him, and he built another building on the same land for the accommodation of his cattle, and was in peaceable and sole possession and occupation of the said land and buildings at the time of the transfer and up to the time when he sold the same to Mr. Clarke."

Augustin Gosselin says: "I remember the time when the said *Joseph Larocque* settled on the land now lot 7 the subject of this application. It was about eighteen years ago. *He built a house on the said land, and lived there for about one year. One of his sons was born in said house, who is now a young man. After he had lived there for about the time I mentioned he crossed the river,"* etc.

"When Joseph Larocque left his place, now lot 7, his son-in-law, Joseph Goudon, was settled on what is now lot 5, and I know that the said Goudon for a great many years after used the building on what is now lot 7 as one of his stables."

"His stables were about 6 or 7 chains to the north of his house, on what is now known as lot 7. The stables in question were still standing when Goudon moved away."

Augustin Gosselin says in his second declaration for the Hudson's Bay Company: "*All the information I gave at the time said declaration was made, was that said Goudon's house was built before the transfer.*"

Alexander Scott says, for the Hudson's Bay Company, that "The said house and stables were on said lot No. 5, but I cannot say whether the whole of said field was on said lot 5, as no survey lines were run at the time Goudon lived on said land."

There is nothing made out by the Hudson's Bay Company to throw even a doubt upon the case of the applicant. The worst statements in the declarations of Gosselin and Scott, the only outside evidence introduced, are that they do not know much about it, and what they do admit to know and state is in complete accord with all the other testimony.

There was a possession, a residence, a cultivation and a living on lot 7 by Joseph Larocque, sen., the father-in-law of Joseph Goudon. Joseph Larocque gave to his son-in-law, Joseph Goudon, that lot, with the house, stables and improvements, and Joseph Goudon continued that possession, occupation and cultivation up to and after "the time of the transfer" (15th July, 1870). This is possession of the lot in question—"peaceable possession," as there was and is no adverse claimants, claiming through possession or any other right only the negative right that the claimant is not entitled. Goudon himself, irrespective of any right through his father-in-law, which ought to be sufficient, had a right in himself. He occupied, possessed, built upon, cultivated and improved the lot 7 sufficient and more than sufficient to give him title under the statute. I venture to say thousands of acres in Manitoba have been granted by the Crown under the Statute in question on much less evidence of possession than there is in this case. Take for illustration the extent to which the equities of possession are carried under the Order in Council of 25th February, 1881, as to what may be termed "staked claims"; without any other or any actual possession, and without any cultivation or improvements whatever—at least 45,000 acres are allowed of that kind—stakes were put down at the corners of lots, without residence, cultivation or improvements;

and such claims are deliberately allowed by an Order in Council. Here is one with actual occupation and possession—evidenced by residence, building, fencing, cultivation and improvements—for years, and having tenfold more strength as a claim; and it should in my opinion, with much greater force of law and facts supporting it, be allowed.

I referred again to the view which, as I understand the precedents in the Department of the Interior, cannot be disputed, that "possession" does not merely refer to the actual land it may be on which a house has its site, or to the actual land enclosed within a fence, or the actual land ploughed and cultivated; but to the "lot" or "tract" on which the house is situate, or on which a portion is fenced, cultivated or improved. In this case both principles apply. Lot 7 was built upon, fenced, cultivated and improved. Lot 5 was also in a similar way. The application for lot 5 has been allowed; with equal reason lot 7 should be allowed. The only difference possible is the single fact that at "the time of the transfer" the residence or house of Joseph Goudon was not on lot shown. This should not make any difference, as the house or residence of Larocque, who gave the land to Goudon, was on it, and was used by Goudon up to and at that time; and besides it was otherwise in sufficient "possession." There is still the fact that the Statute names "tracts" of lands in this connection, and not "a lot." The "tract" in this case was two lots, occupied together, possessed and enjoyed, cultivated and improved together, or as one lot or tract, and not as two lots or tracts. The "tract" became two lots after the Government survey. That fact should not militate against the right to the "tract," and does not either in law or in fact.

The act of surveyors dividing the "tract" was not the act of the applicants or his assignor. They are obliged to acquiesce in it and probably in the extent of acreage in the lots so carved out of the "tract." Although that is hardly just to every extent, yet it may be regarded as practically equitable, but less than that is practical injustice.

JAMES BEATY, Q.C.

OTTAWA, 20th April, 1882.

STATEMENT OF FACTS AND OPINION
FOR
HON. H. J. CLARKE, Q.C.,
OF MANITOBA,

As to Lot No. 9, in the Parish of St. Agathe, Manitoba.

1871, March 28th.--Mr. Clarke bought 160 acres and the buildings and improvements thereon, being the lot 9 in question, this land having been settled upon and occupied by Michael Meehan on the 15th July, 1870, and for some time before, and up to the date of his deed.

Deed dated 28th March, 1871. Consideration \$125.

Michael Meehan conveys to Hon. H. J. Clarke "all that lot or parcel of land situated in the said Parish and Province, bounded as follows: Beginning north of the Hudson Bay Company's posts at Pembina; then running astronomically west forty chains; thence due north forty chains; thence due east forty chains; and thence due south forty chains, to the place of beginning; containing one hundred and sixty acres." Full covenants as to title. In presence of two witnesses--Duncan Sinclair and John Blair.

Duncan Sinclair.—Under the usual affidavit of execution, before H. Archibald, a Commissioner, and registered in the Registry Office of the County of Provencher, at 10 o'clock a.m. on the 27th May, 1879. No. 715. George L. Lecomte, Deputy Registrar.

1879, March 11th.—Patent first applied for on date, and not pushed, on account of absence of Clarke from ill health, until 1879, at which date Clarke was informed there was no adverse claim.

Frederick Mackenzie, on 11th March, 1874, makes application for Clarke and makes an affidavit and claim under the said deed, and says: "I am advised and hereby believe that Michael Meehan, the person named in said deed of which the hereto annexed is a true copy, went into possession of the lands and premises mentioned and described therein, and improved the same by erecting thereon a house, which he used as a store and dwelling for some time and carried on business therein of a grocer or saloon keeper, and that such occupation and improvements were made some time previous to the sale thereof to the said Clarke."

Tenants have been on lot 9 under Clarke since, and Mr. E. Winkler now lives on the lot, and there are about \$1,000 worth of improvements.

Henry Joseph Clarke.—Declaration 3rd June, 1879.

1. That I have known the lands, the subject of this application, during the past nine (9) years.

2. That in the beginning of the year 1871 I accepted office as Attorney General of Manitoba, and was sworn in on the 10th of January of that year. At that time there were American troops at the Fort of Pembina, on the American side of the boundary line, and our volunteers were stationed at the Hudson Bay Company's fort, or post, on our side.

3. That one Michael Meehan was settled on the rear of the lot of land now known in the Dominion survey as lot No. 9, in the Parish of St. Agathe, or in a line with the present front of the said lot.

4. That Meehan had a good log building erected on the land in question, and had been in occupation of the said lot and buildings for two years before, and on the 15th day of July, 1870, and was in possession and occupation of the same when I bought the same from him on the 28th of March, 1871.

5. That Michael Meehan, along with his business as a farmer, combined that of selling whiskey without a license, and was a perfect nuisance, himself and his place, as the troops from both sides of the line were in the daily habit of going there to drink, and as the Half-breeds also went there, rows were of very frequent occurrence. Some of them proved to be of a very serious nature.

6. That after again and again trying, through the police force, to suppress the place, and being appealed to by the officers of the forces on both sides of the line, almost weekly, I at length was obliged to get quit of the man Meehan, and could only do so

by buying out his claim, which I did on the 28th of March, 1871, as will appear by the certified copy of the deed herewith produced.

7. That ever since the 28th of March, 1871, up to the present time, the land in question has always been mine, and that to the knowledge of the neighbours.

8. That there is no adverse claim to the said land, as I have been informed at the Land Office in Winnipeg.

Joseph Goudon.—Declaration 2nd May, 1879.

1. That I have known the lands, the subject of this application, during the past twelve (12) years.

2. That I was personally acquainted with Michael Meehan for a great many years. We worked together on the road, cutting wood and camping together, long before he settled on the land now the subject of this application.

3. At least two years before the fifteenth day of July, 1870, the said Meehan took up the land the subject of this application, and settled on it; built himself a house and additions, and lived continuously on the land in question.

4. That the said Meehan was in peaceable possession and occupation of the said land on the fifteenth day of July, 1870, and for some time afterwards, till he sold the said land and the buildings on it to the present applicant.

5. That I lived within about a mile, or a mile and a half, from Meehan's place while he was there.

David Goudon.—Declaration 3rd May, 1879.

1. That I have known the lands the subject of this application during the past twelve (12) or thirteen (13) years.

2. That I was personally acquainted with Michael Meehan for many years, and lived near his place, the land the subject of this application.

3. That the said Michael Meehan settled on the land the subject of this application fully two years before the fifteenth day of July, 1870, and built a house on said land, and occupied the same for some years, and fenced in and tilled and cropped a good large lot of said land.

4. That the said Michael Meehan was in peaceable possession and occupation of said land and living on it on the fifteenth day of July, 1870, and for some time after, up to the time when he sold the said land to the present applicant, who has owned it ever since.

5. That the said land is situated north of the Hudson Bay Company's fort, on the west bank of the Red River, a short distance from our house.

1880, January 10.—Clarke wrote a letter to Department claiming or reviewing his claim to the lots, and noting points in the evidence for the consideration of the Department.

Henry Joseph Clarke.—Declaration 10th January, 1880.

5. In Joseph Goudon's declaration before Mr. Sedley Blanchard, in the matter of Lot "9," made on the 19th of July, 1879, in contradiction of his former declaration of the 3rd of May, 1879, in support of my application, I find the following statement: "1. *From the year 1866 until the year 1872, I lived in what is now known as Lot number five (5) of Dominion Surveys of the Parish of St. Agaths*" nforesaid, while, on the same day, and before the same Mr. Sedley Blanchard, Joseph Goudon declared—to contradict his former declaration, of the 3rd of May, 1879, in support of my application for Patents for lots 5 and 7—as follows: "*In the year 1871, I sold to Henry J. Clarke, of the City of Winnipeg, my said claim, and I moved off the same in the month of December of the same year.*" These two statements contradict each other very materially, as it will at once be seen, and they are both untrue, firstly, because Joseph Goudon's own two declarations sent to the Surveyor General in support of my applications for Patents for lots 5 and 7, and lot 9, contradict them. Secondly, because I declare that Joseph Goudon was still living on the land purchased from him, now lots 5 and 7, when Mr. Martin, the surveyor, was making his survey in the fall of 1872, and did not leave the house till late in the winter of 1872-3, and, lastly, because it will be seen that in 1872, on the 8th day of July, Joseph Goudon and wife signed my deed of sale of the land in question, a registrar's copy of which deed is in the hands of the Surveyor General in support of my claim; and in that deed, made and signed in presence of George Roy, Esq., Deputy Provincial Secretary, and by him read to the vendors in the French language, among others is the following covenant: "The said party of the first part covenants with the said party of the third part, that he hath a right to convey the said lands and premises to the said party of the third part, he, the said party of the first part, having owned and possessed, and permanently resided on and regularly cultivated the same for over seven years past.

6. Joseph Goudon, when making his declaration on the 3rd of May, 1879, in support of my application for lot number "9," himself volunteered the statement set forth in his declaration: "I was personally acquainted with Michael Meehan for a great many years; we worked together on the road cutting wood and camping together long before he settled on the land now the subject of this application. 3. At least two years before the fifteenth

day of July, 1870, the said Meehan took up the said land the subject of this application, and settled on it, built himself a house and additions, and lived continuously on the land in question. 4. That the said Meehan was in peaceable possession and occupation of the said land on the fifteenth day of July, 1870, and for some time afterwards, till he sold the said land and the buildings on it to the present applicant. 5. That I lived within about a mile or a mile and a half from Meehan's place while he was there," which shows that he was telling the truth at that time, and perfectly understood what he was dictating as his declaration. In March, 1874, I made application through my Attorney, Frederick McKenzie, Esq., of Winnipeg, Barrister, for a patent for the 160 acres of land which I bought from Meehan. That application was referred back in September, 1874, for further proof, which, owing to my absence from the Province for about four years, through illness, was not forwarded till after my return to Manitoba. In May, 1879, I forwarded to the Surveyor General further proof (with my application for a patent for lot number "9" (nine) which had been assigned to me on the plan of survey at my own request, and from the position of Meehan's buildings—lots 23 and 25 being claimed by others—by Mr. Martin, the surveyor, who was employed by the Government, after D'Auteuil's death) in support of my application made in March, 1874, and which application was duly advertised on the 1st of December, 1874, and which was as follows:—(Application in No. 1,396, 11th March, 1874.)

8. One Alexander Scott, an old servant of the Hudson Bay Company, I see by the copy sent me from the Surveyor General's Office, made a declaration against my application for a patent for Lot nine (9), before Mr. Sedley Blanchard, on the 19th July, 1879, in which he declares as follows :

"1. *I have lived in the immediate neighbourhood of West Lynne, in the said Parish of St. Agathe, since the year 1867 and 6. No person ever lived on said Lot number NINE since I came to the Province of Manitoba.*"

Now, Alexander Scott has simply declared a very positive untruth, as is fully proved by the declarations of Mr. E. Winkler, who lives on the said Lot nine (9), and who has, with my knowledge and consent, built on it. Mr. Winkler is known to the whole of the people of Emerson as a prominent man in the town. Very considerable improvements have been made on said Lot nine during the last four years, in ploughing, fencing, building and cultivation. The improvements on Lot nine, belonging to me, are worth one thousand dollars.

9. I send the declaration of William Hill Nash, Esquire ; F. T. Bradley, Esquire, Sub-Collector of Customs at Emerson ;

E. Winkler, Esquire, Merchant, of Emerson; F. A. Martin, Esquire, Dominion Land Surveyor; William Williams, Constable at Emerson; Joseph Lapointe, of the Parish of St. Agathe, Farmer; Antoine Paul Laurente, of the Parish of St. Agathe, Farmer, and Paul Gosselin, of the Parish of St. Agathe, both in contradiction of the counter-declarations fyled by the Hudson's Bay Company in opposition to my applications for patents for lots seven (7) and nine (9), in the Parish of St. Agathe, as also in further proof of the perfect justice of my claim to patents for the said lots seven (7) and nine (9).

10. I claim the said lots seven (7) and nine (9), as I already did the latter in March, 1874, under and by virtue of the Manitoba Act, sec. 32, sub-sec. 1, 2, 3 and 4 of said section.

11. And I further claim that if, on an investigation of my claims to said lots seven (7) and nine (9), it should be determined that the provisions of said Act do not apply, then that the same should be given to me as a homestead and pre-emption, or on payment of the Government price of one dollar per acre, under the Order in Council.

Wm. Hill Nash.—Declaration 3rd January, 1880.

1. That I have known the lands the subject of this application during the past nine years.

2. That Joseph Gondon, of Two Little Points, in the Parish of St. Agathe, Farmer; Augustin Gosselin, of the State of Minnesota, one of the United States of America, Farmer; Jacques St. Denis, of the Parish of St. Agathe, Farmer, on the third day of May, 1879, came to my office at Emerson, and made their several solemn declarations, of which copies are hereunto attached, in support of the application of Henry Joseph Clarke for Patents for Lots numbers five (5), seven (7) and nine (9), in the Parish of St. Agathe; when the declarations of the said parties were written, they were so written at the personal dictation of the parties themselves, and were fully, clearly and explicitly read over and explained to them both in the French and English languages by Mr. Clarke himself, first, and afterwards by Mr. F. A. Martin, Dominion Land Surveyor, so that there could not possibly be anything set forth in their declarations that was not there by their full knowledge and approval. Their declarations were made and subscribed to before me as a Commissioner in B. R., &c. I can further state, from personal knowledge, that Joseph Coulon understands and speaks the English language very fairly, and speaks to me in English.

F. T. Bradley.—Declaration 3rd January, 1880.

1. That I have known the lands the subject of this application during the past about nine (9) years.

2. That I knew Michael Meehan from the time of my arrival at West Lynne in March, 1871; he, the said Michael Meehan, was at the time settled on land at the west side of the great highway leading to Winnipeg, north of the Hudson's Bay point, on the west side of the Red River. Meehan had a good, ordinary settler's log building, in one part of which he kept a liquor saloon, and the other part was used for living in—the building was about 16 or 18 feet by 25 feet. I know that Meehan sold his rights in the lands and buildings to Henry J. Clarke in the spring of 1871, there being no surveys at the time that Meehan sold to Clarke. I cannot positively say the exact location of the buildings, but to the best of my judgment, and from an examination of the map of the surveys of the Parish of St. Agathe, I believe that in a straight line leading to the Red River the buildings in question would be found on or in rear of Lot number nine (9) of the present survey.

Wm. Williams.—Declaration 3rd January, 1880.

1. That I have known the lands the subject of this application during the past eight or nine years.

2. That I was present at the time that Joseph Goudon, David Goudon, Augustin Gosselin and Jacques St. Denis came to the office of William Hill Nash, Esq., at Emerson, on the third of May, 1879, and made their declarations in writing in support of the applications of Henry Joseph Clarke for patents for Lots Nos. 5, 7 and 9, in St. Agathe. All the said persons were perfectly sober at the time, and I know them all personally. Their declarations were written as they were dictated by the several persons themselves, and were read over to them in English and French, first by Mr. Clarke, and then by Mr. F. A. Martin, Dominion Land Surveyor. I am perfectly certain that it was impossible that they could possibly be mistaken as to the facts they declared to, or that their declarations were not just as they dictated them. I am now shown the copies of their declarations, attached to Mr. Nash's declaration, and I declare that they are just as they were dictated by the parties by whom they are signed. Joseph Goudon speaks and understands the English language very well. He has often spoken to me and, in my presence, to others, and in saying the contrary he says what is untrue.

Enoch Winkler.—Declaration 15th January, 1880.

1. That I have known the lands the subject of this application during the past about five years.

2. That Lot No. 9, the subject of this application, is and has been known to me better than to any other person for years past.

3. I have been shown the declaration of one Alexander Scott, an old servant of the Hudson's Bay Company, in which he declares as follows :—" I have lived in the immediate neighbourhood of West Lynne, in the said Parish of St. Agathe, since the year 1867. No person ever lived on said lot number nine since I came to the Province of Manitoba." Either the said Alexander Scott must be blind, or he has declared what he knew to be untrue, because I HAVE BUILT ON THE SAID LOT No. 9, AND LIVE ON IT, AND I HAVE BEEN CULTIVATING BETWEEN SEVEN AND TEN ACRES OF SAID LOT DURING THE PAST THREE OR FOUR YEARS ; THE IMPROVEMENTS ON THE SAID LOT ARE WORTH ABOUT ONE THOUSAND DOLLARS, AND ARE THE PROPERTY OF HENRY J. CLARKE, THE APPLICANT.

4. THE HUDSON'S BAY COMPANY'S SERVANTS, INCLUDING MR. C. J. BRYDGES, KNOW THAT I LIVE ON SAID LOT, AND HAVE TRIED TO INDUCE ME TO RENT IT FROM THEM, SO AS TO ESTABLISH A CLAIM TO IT, WHICH I REFUSED TO DO.

Antoine Paul Laurente.—Declaration 6th January, 1880.

10. Que j'ai personnellement connu Michel Meehan depuis plusieurs années.

20. Que vers le mois de juin de l'année 1869, le dit Meehan résidait en dedans des deux milles à l'ouest de la rivière Rouge, sur le grand chemin ; qu'il y tenait un commerce de liqueurs ; qu'il résidait à cet endroit tout l'été et l'hiver, et laissait au printemps suivant. La maison mesurait environ vingt pieds sur quinze, et était située en dedans d'un mille au nord de la frontière internationale.

30. Que je suis positif que Meehan s'établit à l'endroit dessus mentionné avant l'arrivée des troupes dans Manitoba.

40. Que je connais aussi Joseph Goudon et je sais qu'il comprend et parle l'anglais ; qu'il m'a avoué avoir vendu toute sa propriété à un nommé Clarke, alors procureur-général pour la Province de Manitoba.

Joseph Lapointe.—Declaration 5th January, 1880.

Dans l'affaire de l'application de Henry J. Clarke, pour patente du lot No. 9, des arpentages de la Puissance, dans la Paroisse de Ste. Agathe et Province de Manitoba.

Je soussigné, Joseph Lapointe, de la Paroisse de Ste. Agathe, Comté de Provencher et Province de Manitoba, cultivateur, étant assermenté, déclare comme suit :

10. Que j'ai parfaitement connu Michel Meehan en 1869.

20. Que le dit Meehan, vers le mois de juin de l'an 1869, et certainement avant le mois de juillet 1869, bâtit une maison, d'environ-vingt pieds sur quinze, sur le grand chemin, à environ

un demi-mille au nord de la frontière internationale, telle qu'arpentée actuellement, et en dedans de deux milles à l'ouest de la Rivière Rouge.

30. Qu: le dit Meehan demeura dans la dite maison toute l'été et l'hiver 1869, et y tient un commerce de liqueurs, et abandonna les premisses dans le printemps de l'an 1871.

Paul Gosselin.—Declaration 8th January, 1880.

1. That I have known the lands the subject of this application during the past eleven years.

2. That I personally knew Michael Meehan, who built a house of about twenty feet by fifteen, at a little over half a mile north of the International Boundary line, and within two miles west of the Red River, and lived there for about one year, selling liquor.

3. I know that Meehan built about the year *Anno Domini* 1869, by the arrival of the troops afterwards in this Province, and by the troubles of 1869.

4. I also knew Joseph Goudon, the first owner of River Lots Nos. 5 and 7; and he often told me that he had sold the whole of his property to one Mr. Clarke, of Winnipeg, for one hundred dollars, which he considered an enormous price for that land at that time; and I make this solemn declaration, etc., etc., etc.

F. A. Martin.—Declaration 5th January, 1880.

1. That I have known the lands the subject of this application during the past eight (8) years.

2. That I was employed by the Dominion Government to survey the settlement built on Red River, from the international boundary line at Point La to the second correction line, on both sides of the Red River in the year 1872, (one D'Auteuil, a surveyor, deceased, preceded me in the said survey in 1871).

3. I know Lots numbers five (5), seven (7), and nine (9). When I made the survey of said Lots 5 and 7, in the fall of 1872, Joseph Goudon was living in a log house, which then stood and is still standing on Lot 5. Goudon informed me that he had sold his land to Henry J. Clarke, then Attorney General of Manitoba, and I entered Mr. Clarke's name on my plan of survey as the owner of Lots 5 and 7, as Joseph Goudon told me that he had sold two lots to Clarke, as the improvements, ploughing, fencing, etc., extended over the whole of Lot five, and about one-third of Lot seven. My plan will show the extent of the improvements as I found them at the time of my survey. I remember perfectly well that, at the request of Mr. Clarke, I planted posts to mark Mr. Clarke's land. I planted four wooden posts on the

lines of the lots in rear; Mr. Clarke's name was marked on these four posts; they marked the rear of Lots 5, 7, 9 and 11, all of which Mr. Clarke claimed, as follows: Lots 5 and 7, as being purchased by him, Clarke, from Joseph Goudon; Lot 9, as having been purchased from one Mike or Michael Meehan, and Lot 11, on a volunteer warrant.

4. I remember the remains of Miko Meehan's house. It was, as the lines of survey then ran, on, or very near, the rear of Lot 23; but, as the lines run since the survey of the Dominion Government, it would be just on, or very near, the rear of Lot "9," and, finding the land vacant on Lot "9," and occupied and claimed on Lots "23" and "25," I fixed on Lot 9 as Mr. Clarke's lot, under Meehan's title, and so entered Mr. Clarke's name for it.

5. I know Joseph Goudon, and see and speak to him often. I was present at the office of William Hill Nash, Barrister, and a Commissioner for taking affidavits in B. R. etc., on the third day of May, 1879, when Joseph Goudon, David Goudon, Augustin Gosselin and Jacques St. Denis came to the office to make their several solemn declarations in support of the application of Henry Joseph Clarke for patents for Lots numbers five (5), seven (7) and nine (9), in the Parish of St. Agathe. They were all perfectly sober, and their declarations were written in my presence, and in the presence of William Williams, William Hill Nash and Henry J. Clarke. They dictated their declarations, word for word, as nearly as could be, as they are written, and their declarations were carefully read over to them in the French and English languages; first, by Mr. Clarke, in my presence, and, afterwards, at Mr. Clarke's request, I read their several declarations over again to them in the French language in the most cautious manner, so that there could be no possibility of their being in any manner mistaken as to the facts set forth in their declarations, after which they severally signed, and, under oath, declared that they contained the truth, before the Commissioner.

6. Joseph Goudon, I see by a declaration made by him on the 19th day of July, 1879, before Sedley Blanchard, a Commissioner, etc., says: "I cannot read or write, nor do I understand the English language, and I must have misunderstood the Commissioner who took the declaration." I most positively declare that Joseph Goudon understands and speaks the English language very fairly, and that he perfectly understood and declared to every word and fact set forth in his declaration, as I read it to him, as I did those of all the others in the French language, as I have before stated.

7. I have read from the declaration of one Alexander Scott, made before Mr. Sedley Blanchard aforesaid, on the 19th day of July, 1879, the following: "*No person ever lived on the said Lot number nine (9) since I came to the Province of Manitoba.*" I most certainly declare, in the most solemn manner, that the man Scott has stated a positive untruth, as it is a fact known to all the town of Emerson and vicinity that Mr. Winkler, a merchant in this town, has a good substantial building on the said Lot, and lives in the house, and has lived there since before Scott made his declaration, and that with Mr. Clarke's knowledge and consent; and, further, that Mr. Clarke's improvements on said Lot nine must be worth from eight hundred to one thousand dollars in buildings, ploughing, fencing, etc. So that Scott could not have noticed the lot in question for three or four years past, or else he wilfully declares to an untruth.

The opposing declarations referred to are as follows:

Joseph Goulton.—Declaration 19th July, 1879.

1. In the year one thousand eight hundred and sixty-six I took up a claim of land on the west bank of Red River at what is now known as West Lynne, in said Parish, and in the same year I built a house and stable thereon; subsequently I ploughed up, cultivated and fenced some land.

2. My said house and all my said cultivated land, with the exception of a very small corner, were on what is now known as lot number five of Dominion Government Surveys of said Parish of St. Agathe.

3. I had on said claim, in all, three and one-half acres of land, cultivated, or thereabouts.

4. In the year 1871 I sold to Henry Joseph Clarke, of the City of Winnipeg, my said claim. *I moved off the same in the month of December of the same year.*

5. When I sold said claim, I had no idea of how much land I would be entitled to by virtue of my residence and improvements thereon, but I asked said Henry Joseph Clarke to how much land I would be entitled, and he answered "twelve chains." I therefore agree to sell him twelve chains, and I always understood that it was so expressed in the deed thereof from me to him.

6. I had no side lines, boundaries, or marks to show how much land I had taken up.

7. At the time I owned said land, Half-breeds paid little or no attention to quantity of land, but merely squatted on a place convenient for a house or small field.

Since I removed from said claim it has never been cultivated.

I am informed that in the month of May, 1879, I made a declaration in support of the application of the said Henry Joseph Clarke for a Crown Patent for said lots five and seven, and that in said declaration I stated that I took up and settled on said land in the year 1862; that I sold to said Henry Joseph Clarke said lots five and seven, and that the boundaries of said land so sold was a coule, which separated the same from the Hudson's Bay Company, and thence twenty chains fronting on Red River and two miles back. *I can neither read nor write, nor do I understand the English language*, and I solemnly declare that I never understood that I was making any such declaration; that I did not say that the boundary of my said land was as above described, or that I sold said Henry Joseph Clarke twenty chains of land, but that I understood from him that I would only be entitled to *twelve chains* of land, and I only sold him twelve chains.

10. I further solemnly declare that I did not state to him or any other person that I settled on said land in 1862, and I did not understand that it was so stated in said declaration.

Joseph Goulton.—Declaration 19th July, 1879.

1. *From the year one thousand eight hundred and sixty-six, until the year one thousand eight hundred and seventy-two*, I lived on what is now known as Lot number five (5) of Dominion Government surveys of the Parish of St. Agathe, aforesaid.

2. I was well acquainted with Michael Meehan, who, in 1870, and 1871, kept a grog shop on the main highway near West Lynne, in said Parish.

3. Said Michael Meehan built a house and stable near the outer two miles limit of Lot number twenty-three (23) in said Parish, and about three-quarters of a mile to the north of the northerly side line of Lot number 9 in said Parish.

4. Said house and stables were built after a detachment of troops from what is known as the First Expedition were stationed at Pembina Post, the Post of the Hudson's Bay Company, and, consequently, after the fifteenth day of July, one thousand eight hundred and seventy.

5. Said house was only a shanty, with a flat roof, about six or seven feet high, and about twelve feet by twenty feet in area.

6. The stables consisted of a few logs covered with hay.

7. Said Meehan carried on the business of liquor selling in said house for about one year, when he moved away. He never had any fencing or cultivation in connection with the same.

8. Said Meehan never lived or had any improvements on said Lot nine.

9. In the month of May last, I made a declaration for Henry Joseph Clarke, in connection with his application for a patent for said Lot No. nine (9), and I am informed that, in that statement or declaration, I stated that said Meehan built said house and stable two years before the fifteenth day of July, 1870. I did not understand that I was making any such declaration, and the same is untrue. I cannot write or read, *nor do I understand the English language*, and I must have misunderstood the Commissioner who took the declaration. I did not know, and was not told, the number of the lot for which Mr. Clarke was applying for a patent.

David Goudon.—Declaration 10th July, 1879.

1. I have lived continuously in the immediate neighbourhood of the Village of West Lynne, aforesaid, since the year one thousand eight hundred and sixty-seven.

2. I have known Joseph Goudon ever since the said year.

3. From the said year until one thousand eight hundred and seventy-two said Goudon lived upon what is now known as Lot number five (5) of the Dominion Government Surveys of the said Parish of St. Agathe.

4. The only improvements said Goudon ever had on said lot since I have lived in the said Province of Manitoba were a small dwelling house about twelve feet by sixteen feet in size containing only one room, a small stable about ten feet by ten, feet, and a small field cultivated and fenced, containing from three to four acres, or thereabouts.

5. No improvements have ever been made on said land since said Goudon left it, in 1872. The said house and stables were on said Lot No. "5," *but I cannot say whether the whole of said field was on said Lot five, as no survey lines were run at the time Goudon lived on said land, and all traces of the field are gone; but, to the best of my judgment, it was entirely on said Lot five.*

1. I am informed that, in the month of May, 1879, I made a declaration in support of the application of Henry Joseph Clarke, for a Crown Patent for Lot No. Nine aforesaid, which said declaration contains the following statements, viz.:—That one Michael Meehan settled on said lot fully two years before the fifteenth day of July, 1870, and built a house thereon and occupied it for nine years, and fenced in, and tilled, and cropped a good large lot of said land, and that said Michael Meehan was in peaceable possession and occupation of said land, and living on it on the 15th July, 1870.

2. I never made any such statement, nor did I know that said declaration contained anything of the kind; said Clarke did

not tell me the number of the lots for which he was applying, and all I understood was that the declaration referred to said Meehan's house, without any reference to the number of the lots.

3. What I did say, and what I supposed was in said declaration, was that said Meehan built his house when the soldiers were at Dufferin, which was in the fall of 1870. I did not say that Meehan had his field fenced in and cropped, for such was not the case.

4. The house of said Meehan was on the outer two miles (so called) of the lot of land owned by me, namely, Lot No. twenty-three, according to said surveys of said parish.

5. Said Meehan never cultivated any land in connection with said house, in which he only carried on the business of liquor selling; and he only lived on the same about one year.

6. I can neither read nor write, nor do I understand the English language.

Richard Terrot.—Declaration 9th July, 1879.

1. I am the owner of Lot number twenty-five (25) of Dominion Government Surveys of the Parish of St. Agathe, and have owned the same place for two years.

2. I know the site upon which the building occupied by one Michael Meehan in the year 1870 and 1871 stood. The said building is now burned down.

3. Said building was near the two-mile limit, and on one or other of the three Lots twenty-one, twenty-three or twenty-five, but I could not, with certainty, say on which of the three lots it was, as I have not followed out the survey lines of my lot so far west as the house was situated.

I have frequently seen the site of said house, and it is at least one half a mile north of the northerly boundary of Lot number nine (9) aforesaid.

Alexander Scott.—Declaration 19th July, 1879.

1. I have lived in the immediate neighbourhood of West Lynne, in the said Parish of St. Agathe, since the year one thousand eight hundred and sixty-seven, and was well acquainted with one Michael Meehan, who in the years 1870 and 1871 kept a grog shop on the public road at West Lynne, aforesaid.

2. Said Meehan built said house in the fall of one thousand eight hundred and seventy, after a detachment of the First Expedition (so called) were stationed in the Hudson's Bay Company's Fort, at West Lynne, aforesaid, then called Pembina Post.

3. Said Meehan also built a small stable adjoining said house. The house was built of logs and was about twelve feet by twenty feet, one storey high, with flat roof, and was in reality

only a shanty. The stable was more properly speaking a hay stack, with some logs to support it, and the whole establishment was worth, at the outside, not more than thirty dollars. Said Meehan never had any fencing or cultivation in connection with said place.

4. *The building referred to was built by Meehan for a grog shop and he carried on the business of selling liquor for ABOUT ONE YEAR*, when he went to the River Marais, aforesaid, and took up a claim for the purpose of farming. He lived at the Marais over a year, and then went to reside in the United States, where he has lived ever since.

Said Meehan never lived on said Lot number nine (9), nor did he ever have any improvement thereon.

6. NO PERSON EVER LIVED ON SAID LOT NUMBER NINE SINCE I CAME TO THE PROVINCE OF MANITOBA.

Clarke filed further affidavits in support of his claims as follows :—

Michael Meehan. — Declaration 21st April, 1880.

1. I know the land the subject of this application, in the Parish of St. Agathe, in the Province of Manitoba.

2. In the year 1869, about a year before the transfer of the North-West Territories to Canada, I took up and settled upon land about half a mile, more or less, north of the boundary line, on the west bank of the Red River, and built a good substantial log house, about twenty by thirty feet, and stables, on the land. My buildings were fully as good, or better, than those of the Half-breeds who were my neighbours. My house was built on the highway leading to Fort Garry, and my land lay between the lands of Joseph Goudon and his brother, David Goudon, and, as I believed and intended, within two miles of the Red River. The nearest house to the boundary line was the house of a French Half-breed, whose name I forget, but the Custom House was there after Mr. Bradley came as Collector of Customs; then the Hudson's Bay Company's fort; then, separated from the Hudson's Bay lands by a coule, came Joseph Goudon's land; next there was about a mile or more of vacant land, before you come to the house of Joseph Goudon. Where I took up my land was on a part of that vacant space, away back from the river, about, as near as I could judge, just within two miles of the river, and, as near as the eye could guess, looking in a straight line from my house to the river, about a quarter of a mile, or so north of the coule.

I lived on the land in question till the spring after the Canadian volunteers came to the Hudson's Bay fort, and did a little trading there and sold liquors, and would have continued to occupy

my house and land there, perhaps, to the present time, had I not sold my land and improvements to Attorney General Clarke, of Winnipeg. I sold to him in the end of March, 1871, and gave a deed to him, which was written and witnessed by Mr. Sinclair, a surveyor, and another man, I believe a policeman. I was paid \$125 cash for my land and improvements from Mr. Clarke, which was a long price at that time, but my buildings were well worth it, for land was looked upon as of very little value—every man took as much as he liked. I afterwards took up land about four miles further north, and for two years kept the stage stopping house, until I finally sold out and came to live here.

The Goudons know me well; they both speak English very well, for Half-breeds; I always spoke with them in English; I cannot speak French. David Goudon and myself were acquainted for a long time before I settled on the land I have described. We made trips together, and knew each other well. I considered my title to my land, when I sold it, just as good as any other man's title in the country, under the law passed by the Government of Canada about lands in Red River, and I sold the land, one hundred and sixty acres, in good faith to Attorney General Clarke, and I know, at the time I was paid \$125 for my claim and improvements, there were thousands of acres of land open for people to settle on all around, but the Hudson's Bay Company wanted to get rid of me from there, because I was selling whiskey and taking custom from their store, where whiskey was sold also.

Mr. Bradley, of the Custom House, knows me well, and knew me from the time he came to the Custom House till I sold to Mr. Clarke and moved away.

Joseph Goudon—Declaration 2nd November, 1880.

In July, 1879, I was sent for to my place at Two Little Points by the Hudson Bay Company and threatened if I did not go to West Lynne. I went there and was brought before a lawyer from Winnipeg, Mr. Blanchard, and Alexander Scott, of the Marais, acted as interpreter. Scott cannot speak French half as well as I speak English, and I thought it strange at the time why he should be asked to translate, but it was Mr. Blanchard who read the paper to us in English, and at the time we were all more or less under the influence of whiskey. I am now shown the declaration in question and swear I did not intend to make any such declaration, nor did I understand that I was made to declare any such things as are set forth in said declaration. I never did declare that I did not understand English, because it would be false, as I do speak English passably well, and understand it also.

I did not knowingly declare that I only sold twelve chains of land to Mr. Clarke, because I sold him twenty chains, and I had stated the fact to Mr. D'Anteuil, the first surveyor who came to survey the land in 1871, and also to Mr. Martin, the surveyor who made the survey after Mr. D'Anteuil's death. Nor did I ever intend to be understood that I had only sold twelve chains to Mr. Clarke, and I was not aware that I was made to say that in the declaration made before Mr. Blanchard, as I was well aware that in the deed I gave to Mr. Clarke twenty-four chains was first mentioned, and Mr. Clarke himself informed me at the time that twenty chains was all I could sell, as the Government of Canada had determined to reduce our twelve chain claims to ten chains each to equalize the surveys. In consequence of that the deed was changed to twenty chains only.

As to Michael Meehan I knew him well. He was known to all the neighbours as *Le Boeuf Noir*, because he had a splendid large team of black oxen, and was not very well liked by the people, he was so cross. Fully a year before he sold out his claim to Mr. Clarke the said Mike Meehan came with his wife and family and took up land near me. He first drew logs and built near to completion a house on the bank of the river near to where Mr. Winkler's house now stands, on Lot 9. Before his house was completed one of my cattle came home badly riddled with shot. I cannot say that Meehan shot the animal, but people began to talk about his coming to settle there so close to me. I suppose he heard their talk, because he came to me a day or two after and asked me to show him the boundary of my claims. I told him I was not certain before the lines were run, but I thought he would be on my land. I did this to get rid of him, as I was afraid of the man. He was a very cross old fellow, and I was afraid if my cattle annoyed him I would have trouble. I did not want him for a near neighbour, so he stopped building at that point and went away out about a mile and a half, more or less, on the prairie, in a line with his first building, and built on the west side of the high road then leading to Fort Garry, where he built a good substantial oak log house. The oak logs he used were very fine, because he bought them from men who were rafting the oak logs down from the States, and I know they were the best logs of any used in building in our neighbourhood. I saw him drawing the logs up the river bank with his black oxen, and they were very heavy. Several men were with the raft coming down the river, but I can only remember one of them. His name is Ned Lennon, who afterwards, for many years, kept the red saloon in Winnipeg, and now keeps the "Gable Hotel."

9. Mike Meehan, with his wife and family of several children, lived in the house he built on the roadside for, I am certain, over a year, till he sold to Mr. Clarke, and it was when I heard that Clarke had bought him out that I thought I would try and sell to Mr. Clarke also, which I did.

10. Meehan's buildings consisted of a good log house and stables. His stable was a little distance from the house, and was enclosed with a substantial rail fence. I have been over the ground within a few days past with Mr. Martin, the Surveyor, and others, and I pointed out the remains of Meehan's house and stables. They are quite visible—the cellar and a considerable lot of logs half buried under the ground. The site is near and to the north-west of the old oak boundary post, which stands about seven (7) feet high. I cannot be mistaken in the place. I know it well, and have been there very often when Meehan lived there, and could see it quite plainly from my house; in fact he was one of my nearest neighbours on that side of the river.

11. I know Alexander Scott and am shown his declaration which is read to me, in which he says there never was any improvement on Lot nine since he came to the country. In saying that he tells a very deliberate untruth, because Mr. Winkler's house and outbuildings were, at the time he made that declaration, on the said lot (9), and no one who was not blind could possibly come in from the Marais or cross the ferry to Emerson without seeing the buildings on the lot, unless darkness or blindness prevented them.

Thomas Spence.—Declaration 13th January, 1881.

1. I went to the Hudson's Bay Territory, now the Province of Manitoba and North-West Territory, in the year 1866, and have lived there ever since that time.

2. The foreign population was very limited at the time I went there, and continued to be so until after the year 1870, so that all strangers in the country were easily known.

3. I knew one Mike, or Michael, Meehan, who had a log house at North Pambina, on British territory, on the road leading at that time to Fort Garry. His house was a good ordinary log house, and was about half a mile north of the Hudson's Bay fort, or post. Meehan lived there with his family and sold whiskey.

4. I distinctly remember that Meehan was living in that house in the year 1869, and that I was in the house and saw him there. It was the fall of the year before the transfer of the Hudson's Bay Territory to the Dominion.

Walter R. Bowen.—Declaration.

1. I went to the Hudson's Bay Territory, now Manitoba and the North-West Territory, in the year 1864, and, with the exception

of my forced absence during the Riel Rebellion, I have permanently resided there since 1864.

2. I know well a man by the name of Michael Meehan; he was called "Mike" Meehan as a general thing by the people.

3. The said Meehan used to be around Winnipeg with others of the same kind, such as "Bob," "O'Leone and Jimmey from Cork, and in the year 1869 the said Meehan went to North Pembina, that is to say, on the British side of the boundary line, and built a log house (all the houses in the country were log houses at that time) about half a mile, as near as I can now recollect, to the north and west of the Hudson's Bay Post at North Pembina, on the west side of the road leading to Fort Garry, and certainly within the two mile limit from the Red River.

4. I am quite certain as to Meehan's having his house built there in the fall of 1869, as he sold whiskey there, and I was in his house three or four times, and got drink in his house in the fall of 1869. Meehan's house was as good, if not a great deal better, than the houses of the French half-breeds in that neighbourhood, and he had his family there living with him.

5. Meehan continued selling whiskey at that place up to the early spring of 1871, and then moved away; and it was generally well understood that he had sold his buildings and land to the then Attorney General of Manitoba, the present applicant.

John Connor.—Declaration 8th January, 1881.

1. That in the month of October, 1869, I went with the Honourable William McDougall to the said Province of Manitoba, and about the 1st of November, 1869, was stationed at the Hudson Bay Fort at North Pembina.

2. That I knew Michael Meehan, who lived in a log house or shanty on the Canadian side of the line, about half a mile from the fort, near the road leading to Fort Garry, and that the door of the said house or shanty faced the said road leading to Fort Garry.

3. That at the said fort and within vicinity I remained about two months, and that during that time the men under my charge were in the habit of going to Meehan's to purchase whiskey.

4. That it was well known at the fort and the vicinity that the said Meehan was in the habit of selling whiskey.

And I make this, etc.

Alphonse Fortunat Martin.—Declaration 26th November, 1880.

1. I know the lands the subject of this application during the past eight years.

2. I was the Surveyor employed by the Government of Canada in the years 1872 and 1873 to survey the lots in the Red River Belt, from the International Boundary line to the second correction line, a distance of about thirty-six miles, and I succeeded Louis D'Autuail, who, after making a partial survey of the said Red River Belt, died at Winnipeg in the spring of 1872.

3. I made a declaration before in this matter, and in it I said, and gave my reasons for saying, that I fully believed that the house and stables of one Michael Meehan were on or near the rear of lot No. 9, in the Parish of St. Agathe, and within the two miles of the Red River.

4. I am now in a position to state positively, and do hereby most positively declare, that the house and buildings of the said Meehan were, and the remains of them are still, on what is now Lot 9 in the Parish of St. Agathe, and within the two miles limit of the said river, either by the *present lines* of survey, or according to the *former lines*. I am enabled to make this formal and positive declaration from the fact that I have made a careful survey of the ground after the place had been fully identified by myself and Joseph Tennant, Joseph Goudon and others. A copy of the plan of such survey is here annexed. The place is very easy of identification, as it is only a very short distance from the international boundary post of 1837, which post is about 7 feet high, and about 8x10 inches, of sound oak, marked thus: W.E.N.S., 49th parallel, 1837, and one of the party who came with me, Joseph Tennant, had been there in 1870, at Meehan's house, and while there had cut with a knife, on the said old boundary post, his initials thus: J.T., 1st Co. O.R. (Joseph Tennant, 1st Company Ontario Rifles), and on the said post I found the same still perfectly visible, although bleached by time and exposure.

5. To establish the position of Meehan's house, and in order to ascertain what lot the buildings of the said Meehan were on, I measured from the half mile mound at the back of Lots 23 and 25 due west 34 84 chains, which struck the south corner of Meehan's stable, which stands one hundred feet south of the house;—in other words I produced the division line between river lots 23 and 25 west till it reached Meehan's stable; and from that point I ran a line on the old bearings which were as near as I could ascertain N. 50° W. This line (marked with red ink in the annexed plan) crossed the division line between Lots 7 and 9 at a few chains from the Red River (as marked on the said plan); and I know the old lines to have been of the bearing N. 50° W., because at the time I surveyed the river lots on their present bearing East and West the old settlers complained then that the new lines were not run the same as the old lines. I also noticed

that the Hudson's Bay Company's first improvements, or rather their field improvements, as fenced in, had a bearing to the North-West and very near parallel to the line marked in red on the said plan, and which line, as I explained, I ran from Meehan's house to the river. Farther, when Capt. Cameron, H. M. N. A. B. Chief Commissioner, purchased twenty chains from one Francois Mauville, in 1872, for the Government, and before any Dominion surveys were made, the said Cameron had the division lines of the said purchased land run according to the old lines and on the bearing N. 50' W. and had all the Government buildings put up within these lines as run by his engineers. Capt. Cameron also took one river Lot for himself in 1872, and calculating that the Government would run the division lines on the same bearing as the old lines then in existence, he made his improvements accordingly and built a house on the selected land, but when I afterwards made the Government surveys and ran the lines of division east and west, Capt. Cameron came to me and remonstrated in rather an angry manner, and saying that there was no reason to change the bearing of the lines. The new lines were not only cutting his improvements off the lands he had selected for himself, but also threw nearly all the Government buildings at Duffrin on different lots than those purchased from Ruinville. I remember this perfectly well, as Capt. Cameron caused me a great deal of annoyance, and he came with me and showed me all the lines he had run, and which lines I ascertained to run nearly N. 50' W. astro. Afterwards I received special instructions from the Government to change the bearing of the lines on the Government and Capt. Cameron's lots at the points marked A. B. C. D. on the annexed plan, and to run that part of the lines between said points A. B. C. D. and the Red River on the old bearing N. 50' W. Had not these lines thus been changed, the buildings of the Government which are now on Lot 33, would have been thrown on Lot 31; and Capt. Cameron's house and other improvements now on Lot 39 would have been on Widow Gosselin's land, Lot 37.

6. The cellar at Meehan's house is still quite visible, and also the logs which made the foundation of the house, and the stable is also easily identified by a few logs on the ground and by weeds all around the place where the stable stood. The house measured about 40x25 feet and was built with oak logs.

7. Any person of reasonable judgment, by looking at the position of Meehan's house, must acknowledge that he (Meehan) must have inevitably selected the land adjoining to Goudon. Meehan was selling whiskey in the said house, and most of his traffic was with the soldiers stationed at the Hudson's Bay Com-

pliny post. It is only natural to suppose then that it would have been more beneficial for Meehan to settle closer to the Fort had he thought that there were vacant lands between his house and the Hudson's Bay Company post, instead of putting his house where it is.

8. By a thorough survey of the land and the position of Meehan's house, and after ascertaining the old bearings, I cannot come to any other conclusion than that Meehan, when he built on the highway, had the intention of taking the land next to Joseph Goudon.

Michael Meehan.—Declaration 9th February, 1881.

1. I made a deposition in this matter on the 21st of April, A.D. 1880, and all the facts therein alleged and set forth are true.

2. When I made the deposition in question I forgot to mention one fact, which I am now told is of importance. It is this: When I first made up my mind to take up land near the Hudson Bay Fort, at what was then North Pembina, and is now known as West Lynne, I commenced to build on the river bank, as near as I could guess on the vacant land next to Joseph Goudon's claims, for I understood that his house and barn, which were close together, were on one claim, and his stables, which were two in number, and more than usually roomy for a half-breed, were on the other. I understood the claims to be twelve chains each in front by two miles in length, running back on the prairie, so I guessed as near as I could by the eye and by stepping it, to settle about what I would consider to be in about the middle of the twelve chains, coming next after Joseph Goudon's claim with his stable on it.

3. The place I chose to build on was a high spot near about where the new bridge is now built, and opposite where the lower ferry has been running up to this fall.

4. I cut down trees and began building my house while my family and self were living in a tent near by. I worked hard and got my house ready for covering, when I found that the Goudons were angry about something, so I went to Joseph and asked him to show me where his claims reached to. But he told me that he was not very certain till the lines would be run, but that he thought I might be on one of his claims. I knew well that I was not, but felt certain that the half-breeds did not want me there, but I was determined to hold on to the claim I had taken. I was away for a while at Pembina about that time, and when I got back from there my house was pulled down and most of the logs taken away. So then, as I wanted to do some trading, I thought it would be just as well to build out at the other

end of my claim, on the road to Fort Garry, which I did, as I described in my former deposition, and as it was getting a little late in the fall I had to get logs to build with from some men who were rafting oak logs down the river from Dakota.

5. My buildings were solid and good, better than any half-breed buildings in that neighbourhood, and were near the old boundary post, as I fully intended, on the other end and within the two miles of the front of the claim I had built my first upon as I have stated.

6. I have often seen the place where my house and stable stood when I sold out to Mr. Clarke. The place is quite visible. The last time I passed there, there were some of the oak logs still so be seen, half covered with earth. The place where the cellar was, there still must be a hole, and the whole place was, and must be still, surrounded with tall reeds, such as always spring up around any old buildings or settlement in the prairies.

7. Joseph Gondon's stables, on his claims between my claim and his dwelling house and barn were still standing, and occupied by his cattle and horses, when I sold out to Mr. Clarke in the spring of A.D. 1871, and were always occupied. He was very comfortable for a half-breed, and had a good many cattle and horses, and his house and barn, which were on the other claim, next the coule, were good and comfortable buildings, and he had a good deal of fencing and cultivation on both his claims. The half-breeds as a general thing did not farm much of their land, but kept all the cattle and horses they could, and drank a good deal of whiskey, when they could get it to drink.

8. Before building on the Red River the Hudson's Bay Company's Clerk, at that time, came and also showed me where to build my house, and said that nobody would interfere with me. The name of that Clerk I forget, but he was the head man of the Hudson's Bay Company.

Rev. Father Simonet.—Letter 27th January, 1881.

Extract of a letter addressed to Monseigneur Taché, by the Rev. Father L. Simonet, formerly missionary at Pembina :—

MANNINOOKI, 27th Jan., 1881.

MY LORD,—The spring when I went to Pembina, that is to say, in 1870, Mike Meehan was living to the north of the post of the Hudson's Bay Company, about a mile from the Red River, on the road to Winnipeg. He was there still during the follow-

ing winter. I cannot say whether he was on the land of the Gosselin's or of Goudon's.

(Signed)

L. SIMONET, O.M.I.

Ottawa, 7th February, 1881.

True Copy.

(Signed)

ALEXANDRE,
Arch. de St. Boniface.

Antoine Collin.—Declaration 14th March, 1881.

1. I know the land the subject of this application. It is now known as lot number nine (9), in the Parish of St. Agathe, in the Province of Manitoba.

2. I knew well "Mike" Meehan, an Irishman who used to sell whiskey near the old boundary post on the road leading to Fort Garry; we used to call him "*le vieux Bœuf Noir*," as he owned a large pair of black oxen, and we did not like him because he was very cross and ugly.

3. The year before the Canadian soldiers came to the Hudson's Bay Fort the said Mike Meehan settled down on the west side of the river, about twelve or fifteen chains from Joseph Goudon's house and just about where Mr. Winkler's house is now, near the new bridge, only nearer to the river; he cut down wood and commenced to build a house such as settlers used to build in this country, and we did not like to have him so near us because he was cross. One of my brother-in-law's cattle was badly shot and came to the house wounded, and we suspected Mike Meehan, which made us hate him the more. Goudon and myself had some talk about him and how to get him away from that. Goudon told me that Meehan wanted to know where his boundary was and that he replied he did not know, but thought he might be on his land. A short time after this I went myself and tore down his log house when he was absent, and then he went out to the other end of the lot, according as we understood it at the time, and built the house and stable which he occupied, and he sold whiskey in the house that I have described on the roadside, till after the troops arrived. It was then understood that he had sold his claim and buildings to Mr. Clarke, the Attorney General, and he went away and built another house several miles further down the road where he kept a stage stopping place till he went away out of the country. He was in full possession of the place at the time of the transfer and up to the time he sold to Mr. Clarke.

4. We always understood that our claims were twelve chains by two miles each.

5. I know the lot of land, now Lot seven (7), which was given to my brother-in-law, Joseph Goudon, by my father-in-law, Joseph Larocque, and the building which was on it. My brother-in-law used the building, which was large, about twenty feet square, as stables, and he built another building, also for stabling, on the same land and occupied them both for many years before and at the time of the transfer and up to the time he sold the same to Mr. Clarke. We all knew that the land and building were given to the said Goudon by his father-in-law, and all the family were aware of it.

THE STATUTE

under which this claim is made is 33 Vic., ch. 3, sec. 32, s. s. 4, which says:—

"All persons in peaceable possession of *tracts* of land at the time (15th July, 1870) of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same on such terms and conditions as may be determined by the Governor in Council."

This Parish of Ste. Agathe was a portion of the Province in which the Indian Title had "not been extinguished," and this legislation was designed "for the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them" (12th May, 1870.)

Purchasers of holdings are then defined, the last of which is set forth in sub-section 4 as above quoted, and it had the effect of "assuring to the settlers" * * * "of lands" then "held by them," the "*peaceable possession*" and "the quieting of titles" to such lands; and to "all persons in *peaceable possession* of *tracts* of land" * * * "the right of pre-emption of the same." This section does not limit the possession to a "lot," although the term "lot" is used in section 31, but defines the holding as the "*peaceable possession of tracts of land*," which may mean more than a lot; not likely to mean less.

1. The first question that presents itself is: Had Clarke or his vendor "*peaceable possession*" of a "*tract of land*"; the tract or lot in question?

2. To what extent is "*possession*" required of such "*tract*"? How long is the possession required to be? What is the nature of the "*possession*," which entitles the holder to "the right of pre-emption"?

"Possession" is a wide word, and of large application. In cases in the new territory in Manitoba almost any actual locating

on lands, combined with residence, must be taken to have been "possession" within the meaning of the Act. I have no doubt Governments in their dealings with the "settlers" in the Province of Manitoba have always viewed the question in a liberal spirit, in favour of the settler, and not adversely to him or harshly towards him. This is evidently the spirit and the meaning of the Act. The possession was to be "peaceable." Michael Meehan had no dispute with anyone, although he lived there for some time. There was no adverse claim when Clarke bought, nor for seven years afterwards. There was no adverse claim fyled anywhere at the time he bought from Meehan; nor has there been any since based on "possession" or any right or title in direct connection with the land. The opposition to the claim to lot 9 is simply denial of possession, or of right. The possession as far as it went was certainly "peaceable," as there were no adverse claimant—no person claiming adverse possession. There is no length of time required to bring persons in possession within the Act. All they needed was to be in "peaceable possession" "*at the time of the transfer*" from the Hudson's Bay Company to Canada, that is, on the 15th July, 1870. The gist of the contention now made, as it appears, on behalf of the Hudson Bay Company is, as I judge from the nature of the declarations put in on their behalf, that Meehan had not "peaceable possession" of lot 9; or had not such "possession" of lot 9 as is contemplated by the Act to entitle him to the "right of pre-emption." There is no doubt he was a "settler," and that he settled on lot 9, and that he was in some kind of possession on the 15th July, 1870; but was that settling as is shown by the declarations such possession of lot 9 as brings him within the Act? To determine that the evidence must again be briefly referred to.

Henry Joseph Clarke says:—

"That one Michael Meehan was settled on the rear of the lot of land now known in the Dominion survey as Lot 9, in the Parish of St. Agathe, or in a line with the present front of the said lot.

"That Meehan had a good log building erected on the land in question, and had been in occupation of the said lot and buildings for two years before and on the 15th day of July, 1870, and was in possession and occupation of the same when I bought the same from him on the 28th March, 1871."

Joseph Goudon says:—

"At least two years before the 15th day of July, 1870 the said Meehan took up the land the subject of this application and settled on it, built himself a house and additions and lived continuously on the land in question.

"That the said Meehan was in peaceable possession and occupation of the said land on the 15th day of July, 1870, and for some time afterwards, till he sold the said land and the buildings on it to the present applicant."

David Goulon says:—

"That the said Michael Meehan settled on the land the subject of this application fully two years before the fifteenth day of July, 1870, and built a house on said land and occupied the same for some years, and fenced in and tilled and cropped a good large lot of said land.

"That the said Michael Meehan was in peaceable possession and occupation of said land and living on it on the fifteenth day of July, 1870, and for some time after, up to the time when he sold the said land to the present applicant, who has owned it ever since."

F. T. Brulley says:—

"Meehan had a good, ordinary settler's log building, in one part of which he kept a liquor saloon, and the other part was used for living in. The building was about 16 or 18 feet by 25 feet.

"I cannot positively say the exact location of the buildings, but to the best of my judgment, and from an examination of the maps of the surveys of the Parish of St. Agathe, I believe that in a straight line leading to the Red River the building in question would be found on or in rear of lot number nine (9) of the present survey."

Enoch Winkler says:—

"That Lot No. 9, the subject of this application, is and has been known to me better than to any other person for years past."

And in referring to what Alexander Scott declared, he says: "Either the said Alexander Scott must be blind, or he has declared that which he knew to be untrue, because I have built on the said Lot No. 9 and live on it, and I have been cultivating between seven and ten acres of said lot during the past three or four years. The improvements on the said lot are worth about one thousand dollars, and are the property of Henry J. Clarke."

Fortunat A. Martin, Surveyor, says:—

"I remember the remains of Mike Meehan's house. It was, as the lines of survey then ran, on or very near the rear of Lot 23; but as the lines run since the survey of the Dominion Government it would be just on or very near the rear of Lot 9, and finding the land vacant of Lot 9, and occupied and claimed on

Lots 23 and 28, I fixed on Lot 9 as Mr. Clarke's lot under Meehan's title, and so entered Mr. Clarke's name for it."

Mr. Martin also proves distinctly that Mr. Winkler lives on Lot 8, and that there are improvements thereon worth from \$800 to \$1,000.

Joseph Goudon says:—

"Fully a year before he sold out his claim to Mr. Clarke the said 'Mike Meehan' came with his wife and family and took up land near me. He first drew logs and built near to completion a house on the bank of the River *near to where Mr. Winkler's house now stands on Lot 9*" Trouble arose about cattle, and Goudon says further: "So he stopped building at that point and went away out about a mile and a half, more or less, on the prairie *on a line with his first building* and built on the west side of the high road then leading to Fort Garry, where he built a good substantial oak log house."

"Mike Meehan with his wife and family of several children lived in the house he built on the roadside for, I am certain, over a year, till he sold to Mr. Clarke, and it was when I heard that Clarke had bought him out that I thought I would try and sell to Mr. Clarke also, which I did."

"I have been over the ground within a few days past with Mr. Martin, the Surveyor, and others, and I pointed out the remains of Meehan's house and stables. They were quite visible—the cellar and a considerable lot of logs half buried under the ground. The site is near and to the north-west of the old oak boundary post, which stands about seven (7) feet high. I cannot be mistaken in the place. I know it well, and have been there very often when Meehan lived there, and could see it quite plainly from my house; in fact he was one of my nearest neighbours on that side of the river."

I will not further copy the plaintiff's statements as to the occupation or possession by Meehan of the lots in question, but will look at what is said to the contrary.

Joseph Goudon says, in his pretended declaration of 19th July 1879:—

That Meehan built "about three-quarters of a mile to the north of the northerly side line of Lot number nine in said Parish." This is altogether too much, and must refer to the second building of Meehan, which he built after he removed, having sold to Clarke; otherwise it is probably untrue. It is not reasonable, in view of all the established facts, about which there can be no doubt.

He says also, "said Meehan never lived on had any improvements on said lot nine."

In view of what he said in his first declaration, when there were no disputants, the above declaration is not worth much. It is said Meehan "built himself a house and additions and lived continuously on the land in question."

David Goudon is equally unfortunate in being against himself, although not so clear or explicit in his opposing statements as in his first.

Richard Terrot says: "I have frequently seen the site of said house, and it is at least one-half mile north of the northerly boundary of lot number nine (9) aforesaid." It is quite clear the "site" could be seen as Terrot says, and if so, then the surveyor (Martin) saw it, and Joseph Goudon saw it and pointed it out to the surveyor, and it would seem clear that the surveyor's evidence as to whether it was on Lot 9 or not is conclusive as against the evident guess work of anyone who makes it *three-quarters* of a mile north of lot 9, and the other *half* a mile. Since the location or site of the building could be examined, surveyors' testimony is conclusive as against the uncertain and clearly unreliable testimony of men who spoke for the side which sought their evidence every time. The evidence of Alexander Scott is too glaringly erroneous to make it worth anything. It contradicts every person and every established thing, and may be dismissed without further notice.

There is, therefore, nothing made out by the Hudson Bay Company to throw any doubt upon the case of the applicant.

There was a possession, a residence, a cultivation and a living on lot 9 by Mike Meehan, and he sold that lot, with the house, stables and improvements, and Clarke continued that possession, occupation and cultivation. This is possession of the lot in question—"peaceable possession," at the time of the transfer (15th July, 1870) as there was and is no adverse claimants, claiming through possession or any other right only the negative right that the claimant is not entitled. Meehan occupied, possessed, built upon, cultivated and improved the lot 9 sufficient and more than sufficient to give him title under the Statute. He improved it at both ends. I venture to say that thousands of acres in Manitoba have been granted by the Crown under the Statute in question on much less evidence of possession than there is in this case. Take for illustration the extent to which the equities of possession are carried under the Order in Council of 25th February, 1881, as to what may be termed "staked claims"; without any other or any actual possession, and without any cul-

tivation or improvements: whatever—at least 45,000 acres are allowed of that kind—stakes were put down at the corners of lots, without residence, cultivation or improvements; and such claims are deliberately allowed by an Order in Council. Here is one with actual occupation and possession—evidenced by residence, building, fencing, cultivation and improvements—for years, and having tenfold more strength as a claim; and it should in my opinion, with much greater force of law and facts supporting it, be allowed.

I refer again to the view which, as I understand the precedents in the Department of the Interior, cannot be disputed, that "possession" does not merely refer to the actual land it may be on which a house has its site, or to the actual land enclosed within a fence, or the actual land ploughed and cultivated; but to the "lot" or "tract" on which the house is situate, or on which a portion is fenced, cultivated or improved. In this case both principles apply. Lot 9 was built upon, fenced, cultivated and improved.

JAMES BEATY, Q.C.

OTTAWA, 29th April, 1882.